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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAN SEBASTIAN SEIFERT

Appeal 2009-007164
Application 10/642,506¹
Technology Center 2100

Before JAMES D. THOMAS, JAY P. LUCAS, and DEBRA K. STEPHENS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Application filed August 18, 2003. The real party in interest is Hewlett-Packard Development Co.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals from a final rejection of claims 1, 3 to 5, and 7 to 24 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b). Claim 2 is cancelled (Brief 3, middle). The Examiner finds that claim 6 is allowable (Final Rej. 12, top, mailed March 17, 2008).

We reverse.

Appellant's invention relates to a graphical user interface that provides efficiencies for users employing a computer mouse (Spec. 17, ll. 29 to 31). In the words of Appellant:

[T]he user is not forced to move the mouse as far as with prior solutions. After the item of the menu 14 has been chosen[,] the pointer is located in the same position as it was in before the menu was opened. This can be advantageous if context-sensitive menus are opened, for example. This is because after the item of the menu has been selected, the mouse pointer 16 still stays over the element for which the context menu was opened, providing the ability to proceed immediately with further commands. When using the computer mouse, the hand of the user is less moving because only the fingers have to be moved, not the whole hand, as when moving a conventional mouse. Thus, a general purpose of the embodiment is to provide an improved graphical user computer interface [that] is easy to handle and reduces a user's loss of time.

(*Id.* at ll. 20 to 31).

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Independent claim 10 illustrates the claims on appeal:

10. The graphical user computer interface enabling a user to open at least one menu and to select an item of the menu by means of a pointing device, said pointing device controlling a moveable pointer and a moveable menu item focus,

wherein the interface is arranged such that, after the menu has been opened, the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rosenberg US 6,128,006 Oct. 03, 2000

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1, 3 to 5, and 8 to 22 stand rejected under 35 U.S.C. § 102(b) for being anticipated by Rosenberg.

R2: Claims 7, 23, and 24 stand rejected under 35 U.S.C. § 103(a) for being obvious over Rosenberg.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(b) and 103(a). The pivotal issue

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specifically turns on whether the Rosenberg patent teaches Appellant's negative limitation "without moving the pointer" of claim 10.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellant has invented a graphical user computer interface, computer, medium, and method for a user to open a menu item using a computer mouse, such that when the menu is opened the menu item focus is moveable within the menu without moving the pointer. (*See* claim 1.)

Rosenberg

2. The Rosenberg reference discloses a graphical user computer interface for a user to open a menu item using a computer mouse, such that when the menu is opened the menu item focus moves concurrently with the cursor within the menu. (*See* col. 17, ll. 30 to 40; Fig. 9.)

PRINCIPLE OF LAW

Appellant has the burden on appeal to the Board to demonstrate Examiner error. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

*Argument with respect to the rejection
of claims 1, 3 to 5, and 7 to 24
under 35 U.S.C. §§ 102(b) and 103(a) [R1 and R2]*

The Examiner has rejected the noted claims for being anticipated or rendered obvious by Rosenberg, pages 3 to 10 of the Examiner's Answer.

Appellant reiterate that independent claim 10 recites "the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer." (Brief 8, bottom). However, Appellant says that if the Rosenberg prior art reference's wheel 16 is operated by a user to control up-and-down movements of highlighter 210, then cursor/pointer 204 would also be moved up and down at the same time, contrary to the claim limitation that the pointer is not moved (Brief 9, top).

We find Appellant's above-stated argument persuasive and dispositive in the case on appeal. We find that Appellant has invented a graphical user computer interface, computer, medium, and method for a user to open a menu item using a computer mouse, such that when the menu is opened the menu item focus is moveable within the menu without moving the pointer (FF#1). In contrast, we find that the Rosenberg reference discloses a graphical user computer interface for a user to open a menu item using a computer mouse, such that when the menu is opened the menu item focus moves concurrently with the cursor within the menu (FF#2).

[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed *but also all of the limitations arranged or combined in the same way as recited in the claim*, it cannot be said to

prove prior invention of the thing claimed and, thus,
cannot anticipate under 35 U.S.C. § 102.

Net MoneyIN, Inc. v. VeriSign et al., 545 F.3d 1359, 1371 (Fed. Cir. 2008) (emphasis added).

Contrary to the Examiner's findings, this Board concludes that the Examiner has not found a teaching in Rosenberg for the negative claim limitation "without moving the pointer," as recited in exemplary independent claim 10. Whether Rosenberg's mouse moves or is disabled, as the Examiner asserts in the "Response to Arguments," simply is not pertinent to Appellant's claim limitation "without moving the pointer," since Rosenberg's cursor alone is being equated to Appellant's claimed "pointer" (col. 6, ll. 17 to 22; Ans. 4, top and 13, middle). Since the reference teaches that the wheel 16 moves the cursor 204 (*i.e.*, the claimed "pointer") (*see* FF#2) as the selection from the drop down menu is performed, we find that the prior art does not teach a key element recited in Appellant's claim 10. We thus agree with Appellant that Rosenberg's teachings do not meet the claim limitation "without moving the pointer." Accordingly, we reverse the rejections R1 and R2.

Claims 1, 3 to 5, 7 to 9, and 11 to 24 stand with representative claim 10.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has shown that the Examiner erred in rejecting claims 1, 3 to 5, and 7 to 24.

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DECISION

We reverse the Examiner's rejections R1 and R2 of claims 1, 3 to 5, and 7 to 24.

REVERSED

peb

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